Sectt. II-27—45.004—14-11-29.

Law (genl.) (1930) Department.

MS. SERIES.

G.O. No. 35-82

DATED 26-8-1930

[Despatch Abstract.]

Short reference

[illegible] Original [illegible] of [illegible] steps [illegible] [illegible] [illegible]

C.F. 20.

DEPARTMENT.

Received ..... 19 *Registered* 19

L. 3368 B
148/30

Subject.

C.R.C.13/30 - Sessions Court, Coimbatore - Against C.C.53/29 - Sub Divisional Magistrate, Kollegal - legal assistance to Sub Inspector of Police and Head Constable, Kollegal.

ENCLOSURES.
No. 2
Spare copies .....

Ref.No5566/30-D3

Station Coimbatore, *Dated the* 8th August 1930. 19

From (Name) S.H.Slater Esq., C.M.G., C.I.E., I.C.S.,
(Designation) District Magistrate of Coimbatore.

To The Secretary to the Government of Madras,
Law (General) Department.
M a d r a s.

Sir,

One Devappa of Mathipuram complained against the Sub Inspector of Police, Kollegal (Mr. Sundararajulu Naidu) and Head Constable 242 for offences under section 323 and 355 I.P.C. alleged to have been committed by them in the discharge of their official duties. The case was enquired into by the Sub Divisional Magistrate, Kollegal in C.C.no.53/29 and he discharged the accused and ordered the complainant to pay compensation of Rs.25/- to each of them under section 250 Cr.P.C. The complainant filed a revision petition in the Sessions court against the order of discharge. The Sub Inspector and Head Constable applied for legal assistance which was granted by me. The Public Prosecutor ~~ex~~ opposed the

the revision petition and was paid a fee of Rs.15/-.
The Sessions Judge dismissed the revision petition (Cr.R.P.no 134/1930).
I enclose copies of the Sessions Judge's and the Sub-Divisional Magistrate's orders and recommend that the fees paid to the Public Prosecutor may be met entirely from Government funds.

Zeppulis

s.v.s/11-8.

for Dt. Magistrate.
11-8-30

3

Copy of order in C.C.No 55 of 1929 on the file of the Sub Divisional Magistrate, Kollegal.

This is a complaint under sec. 330 and 323 I.P.C. against the Sub Inspector of Police and the Head constable of Kollegal station. The allegation is that they beat the complainant who was suspected in a theft case in order to extort a confession or a clue as to the stolen property from him.

2. The prosecution case is briefly this. On 26-9-29 Thursday, the V.M. of Ikkadanalli sent a report to the Police to the effect that some fowls, clothes and jewels were stolen from the house of one Forest guard Abdul Rahman Sahib. On 27-9-29 Friday, when the complainant was working in his field in Chikkallur he was called by Thotti Kullakempa and Forest watcher Komma Kuba. They said that the accused and the V.M. wanted him (the complainant.) The complainant asked them why he was wanted. They said they did not know. The complainant accompanied them to Mathipuram. The accused, the Village Munsif and the said Abdul Rahman Sahib were there. Abdul Rahman Sahib told the Sub Inspector that it was the complainant who had committed the theft. The complainant denied it. The Sub Inspector told him that he would be given properly if he did not speak the truth. Then they took him to Ikkadanalli. The Sub Inspector went to the Marigudi. The Head constable and Mongal took the complainant to Siddappaji temple where the Head Constable gave him two blows on the back of his head with his hand. Then they took him to the Marigudi. The Sub Inspector was there. The Sub Inspector asked the Head Constable what the complainant said. The Head Constable said that the complainant did not speak the truth. Then they took him near a tank in Ikkadanalli. There the Head Constable made him sit down and then administered eight or nine fist blows on the upper portion of his back. The Sub Inspector kicked him thrice with his foot on which there was sandal.. Again he was taken to the Village (Mathipuram, and the Head Constable again gave him two blows on the

4

back of his neck. This was near the house of one Kandiaya. Then the complainant's house was searched. All this took place from noon till midnight. That night the complainant was kept under watch. Next morning (28-9-29) the accused left the village and the complainant was allowed to go.

3. The complaint was filed on 4-10-29. In his sworn statement, the complainant said that on 28-9-29 he got fever on account of the pain caused by the beating, on Sunday evening he came to Kottegal, on Monday (30-9-29) he got his complaint written, then the fever became worse, so much so, that he had to be under treatment in the Hospital and was therefore able to file the complaint only on 4-10-29. I sent the complainant the Medical Officer for examination as soon as the complaint was filed. The Medical Officer reported to me that the complainant did not complain of any pain then, that there were no marks of injury, not even tenderness, and that he was in good health then. He further stated that the complainant was an outpatient in the hospital on 30-9-29, 2-10-29 and 4-10-29 and was given quinine mixture as he complained of malarial fever.

4. On 10-10-29, I referred the complaint to the Sahsildar Magistrate, Kottegal for enquiry and report under sec. 202 C.P.C. He examined all the witnesses and submitted his report on 5-11-29 giving his opinion that the case was false as there were several discrepancies in the evidence and as the witnesses were interested or unreliable. I, however, thought from the statements recorded at the enquiry that there was a case for further proceedings.

5. The prosecution has examined seven witnesses. P.W. 1 is the complainant. P.W. 2 speaks to the beating in Siddapuri temple and near the tank. P.W. 3 saw only the beating in the Siddappuri temple. P.W. 4 did not see any beating. He says that at about 11 A.M. he saw the head constable, Monigal and some others going to P.W. 1's house. P.W. 7 also speaks about this. It is not clear why the policemen went to P.W. 1's house then, because the house was made in the afternoon. Probably the sub,

5

search was made in the afternoon. Probably the suggestion is that they went to his house to see the complainant, and not finding him there, got him from his field. P.W. 5 saw the last beating, the one near Kumaraya's house in Mathipalam. P.W. 6 does not say anything relevant. P.W.7 is a school master. He says that at 4 or 4.45 P.M. the Sub Inspector called him from his school and they went and sat on the pial of Kumaraya's house. He says that the Head Constable gave two blows to P.W. 1 asking him where he had placed the stolen things. He adds that the police then searched P.W. 1's house, nothing was found, that the Sub Inspector asked him to sign the search list and that he refused to sign it as he was a school-~~master~~ teacher.

6. The accused deny the offence. Their statement is to this effect. The theft was reported on 26-9-29. The Sub Inspector received the report at 5 P.M. He started at once and reached Mathipalam at about 4.30 P.M. or 5 P.M., made enquiries, and searched the house of P.W. 1 who was suspected in the case between 6 and 7 P.M. The stolen properties were not found. The Head Constable who was on some other duty in Ikkadanahalli had also joined the Sub Inspector for this enquiry. Enquiries were continued the next day and they returned to the station in the evening. It is alleged that in connection with certain cases there is ill-feeling between the Sub Inspector on the one hand and one Pattayam Pattusami and his brother-in-law Siddalingappa on the other and that these two persons got up the case and procured the witnesses.

The delay in filing the case cannot be considered to have been satisfactorily explained. In the sworn ~~statement~~ statement the complainant said that he came to Kollegal on 29-9-29. evening. But in his statement before the Sabistandai Magistrate and his examination in chief, he said he came to Kollegal on 30-9-29. In his sworn statement he said that he had fever on

Saturday (28-9-29). Now he says that he got fever only on Sunday (29-9-29). Even granting that there was some fever - think it is suspicious that the complaint was not filed for five days after coming to Kottegal. The complainant admits that he was going to the hospital from the place where he was living in Kottegal, which is more than the distance from the hospital to the court. The complaint says that he did not come to court till the 4th as he was weak and had not sufficient strength to stand the examination in court. When the complainant was walking to the hospital, he could easily have walked to the court and filed the complaint and if he was weak to stand the examination he could have requested the court ~~and~~ to postpone the examination or to be allowed to sit when being examined. I have examined the doctor as a court witness. He says that when the complainant went to him on 30-9-29, he had no fever at all though he complained of fever and that he did not tell him that he was assaulted by the police. This shows that the complainant was simply malingering.

8- There are no injuries on the person of the complainant. The prosecution case is that about a dozen fist blows were given on the upper portion of the back, or below the neck, two or three blows on the head and three kicks on the back. According to the complainant, he had severe pain, so much so that the pain brought on fever. Although the complainant was attending the hospital no attempt was made to get a wound certificate. The doctor says that he did not ask for a certificate. If he had really pain, when he came to Kottegal, there would certainly have been some contusion on the body clearly visible, and a wound certificate could have been obtained about them. This he did not do. On the other hand he came to the court at a time when the injuries would have disappeared even if they existed in the beginning. This makes me even think that the complainant was afraid to come to court immediately because if there were no injuries then, nobody would have credited his story of beating. It is also not clear how malarial fever could have been brought on by beating. At any rate

the absence of injuries and the complainant's failure to get a wound certificate when he had ample opportunities to get it show that the complaint is false or considerably exaggerated.

The accused's contention is that one Palayam Puttusami is at the bottom of this case. Some of the witnesses are connected with him. There is admittedly faction in the village and the complainant and some of the prosecution witnesses are opposed to the party of the Mottgar. It is very significant that during his five days' stay in Kollegal, the complainant was staying in the house of Palayam Puttusami. The complaint purports to have been written on 30-9-29; but it can hardly be believed. The complainant says that he himself bought the stamp for the complaint, but he cannot say on what date he purchased it, from whom and for how much. He says he could not remember these particulars as he was having fever then. It is curious that he went to purchase the stamp and get the complaint written when he had such fever, but could not file the complaint with all that. My inference from all these facts is that some people were actually helping the complainant during this period to prepare the complaint.

10. According to the prosecution, the beating as well as the house search took place on 27-9-29. But the Sub Inspector says he searched the house on 26-9-29. I have perused the search list. It shows that the search was made on 26-9-29. The Sub Inspector's endorsement submitting it to the Taluk Magistrate is dated 26-9-29 and it was received in the Taluk Magistrate's office on 2-10-29. The Sub Inspector says that he and head constable left the village at about 11 A.M. on 27-9-29. That was exactly the time (rather 10.30 A.M.) when according to the prosecution witnesses, the police party came to Mathipuram in the first instance. The question arises whether the complainant would have said, granting that his story was false, that he was beaten at a time

8

when the police were never in that locality. On the other hand the fact that the Taluk Magistrate received the search list only on 2-10-28 makes it possible that the Sub Inspector might have altered the date after he came to know that a complaint was going to be filed. Apart from these probabilities the matter is not clear and nothing definite can be said about it.

11. I have already said that there is faction in the village. P.W. 1 belongs to one party and the Moniagar belongs to the opposite party. P.W. 5 belongs to P.W.1's party. P.W.5 had said before the Sarlstadai Magistrate that P.W. 4 also belongs to the same party. Now this is denied. P.W. 2 is a very important witness in the case. When he was arrested on a civil warrant in 1920 or 1924, Para,am Puttusami stood surety for him and got him released. He was a defence witness in a murder case against Puttusami's brother-in-law Sidambaram, a relative of by the accused. P.W. 2 is also connected with P.W. 1. P.W. 2 has sold his lands to P.W. 1 and his brother, who have still to pay him some portion of the purchase money. P.W. 2 was twice made to resign the Moniagar's posts that he held, once removed he says for non-residence in the village and once suspended for delay in remittance. He was also found fault with for making unfounded allegations against the Divisional Officer. P.W. 7 who is another important witness is a relation of P.W. 2. The first statement that he (P.W. 7) made to the Sub Inspector, viz., the complainant as a Sivachar and a good man would not have stolen rowis and that the allegation was probably made as a result of faction shows that his sympathies were strongly in favour of the complainant. P.Ws. 3 and 4 were both defence witnesses in a forest case about two years ago. P.W. 3 was a prosecution witness in an assault case of 1928 which was thrown out. He was connected with some other cases also. It is therefore clear that none of these witnesses can be said to be disinterested and reliable.

12. Coming now to the actual beating.--In the complaint

9

it is said that at Sundaram temple the head constable gave only one blow. The present case is that two blows were given. P.W. 2 had stated at the Srivilliputtur Magistrate's enquiry that two or three blows were given. P.W. 3's statements are quite unreliable. He says that of all the persons present in the temple and outside, he observed and recognized only P.W. 1 and the Head Constable. P.W. 2 is the only witness who has seen the alleged beating and kicking near the tank. P.W. 1 is not able to say definitely whether those blows were given by Head Constable with hand or anything else. P.W. 2 says the blows were with the fist. As regards the last beating, viz., the beating near Kumaraya's pial, P.W. 2 says that the head constable gave the blows asking P.W. 1 whether he would now speak the truth. The witness cannot say whether the head constable beat with hands, stick or cudgel. P.W. 7 says that the Head Constable beat P.W. 1 asking him where he had placed the stolen things. P.W. 1 however says that the head constable beat him asking him whether he would not give his house for search. P.W. 1 had already given his permission for the search and hence it is not clear why he was beaten. All these beatings are alleged to have been administered in public in the presence of several persons. I think that the prosecution story is not credible.

15. Considering the delay in filing the complaint which has not been satisfactorily explained, the absence of any injuries on the person of the complainant, his malingering fever, his failure to tell the doctor on the three occasions he appealed before him prior to the filing of the complaint that he was assaulted by the police, the connection between the complainant and Puttusami who is not on good terms with the accused, the interested and unsatisfactory nature of the evidence and the generally unreliable character of the important witnesses, I think the case is false as well as frivolous and vexatious. I

therefore discharge the accused under sec. 253 C.P.C. and call upon the complainant to show cause why the accused should not be awarded compensation under sec. 250 C.P.C. The complainant only says that the complaint is not false. ~~X~~ I have already given reasons for holding and for these reasons, I am satisfied that the complaint is false as well as frivolous and vexatious. I think that the accused should be awarded compensation. I, therefore, direct that the complainant should deposit Rs. 50/- in the court to be given to the two accused at Rs. 25/- (Twenty five) each. In fixing the amount of compensation, I have taken into account the fact that the accused had not to engage a pleader as the case was conducted by the Inspector of Police. In default of payment the complainant will undergo simple imprisonment for thirty days.

Sd. K. Ramavarma Raja.
4-1-1930
Sub Divl. I Class Magistrate.

(Copy)

Zeffendi
11-8-30.
for DI Magistrate.

-8-30

In the Court of Session of the Coimbatore Division

Present:- M.R.Ry. Rao Bahadur A.V.Govinda Menon Avargal, B.A.B.L.,

Sessions Judge

--

Saturday, the 28th day of June 1930

--

Crl.Revision petition No.13/30

C.C.No.53/29 on the file of the Sub Divisional 1st class Magistrate of Kollegal

---

Devappa ::: ::: Petitioner

vs

1. Sub Inspector Sundararajulu Naidu
2. Head Constable Krishnasami Goundan

) Respondents.

Petition, dated 21-3-1930, under section 435, Cr.P.C., praying that for the reasons stated therein, the order of the lower court be set aside and a re-enquiry into the case be ordered:-

This petition coming on ϕ this day for hearing, upon perusing the petition, the order of the lower court and the records in the case and on hearing the arguments of Mr.K.Sapen, advocate for the petitioner and of the Public Prosecutor contra, the Court passed the following

O r d e r

The Magistrate has given very good reasons for his order of discharge: and I see no ground whatever to interfere with the order. The petition is dismissed.

(Sd) A.V.Govinda Menon,

Sessions Judge

(True copy)

By order

Sheristadar

To,

The District Magistrate, Coimbatore,
with ref: to his letter 5566/30-D3, dated 28-7-30.

13

Law (Genl) Deptt.

3368B. From the Dist. Coimbatore. Ref no 5566/30D3 dated 8.8.30.

Legal Assistance - Fees to Pleader - Criminal Prosecution of Sub-Inspector of Police & Head Constable. Collegal.

In Criminal Cases, when Compensation awarded to Govt. Servants, the amount of Compensation awarded is either deducted from the amount of Pleader's fee sanctioned or the full fee is paid and the amount of Compensation is recovered & credited to Govt. For precedents vide

(A) G.O no 1528 Law (Genl) dt 3.5.1928
(B) Go no 4071 Law (Genl) dt 28.4.28
(C) Go no 4191 Law (Genl) dt 6.12.28

2 In the case under reference the Sub-Inspector of Police and the Head Constable have been awarded a Compensation of Rs 25/- each. The D.M's recommendation that the fee of Rs 15/- paid to the Public Prosecutor, for opposing the Revision Case before Sessions Judge, should be met entirely from Govt funds, is opposed to the procedure

follows, further to as indicated in para 1 above.

3 The D.M's recommendation may be vetoed & he requested to refund the amount Rs 157- paid to the Public Prosecutor from the Sub-Inspector Head Constable in equal shares.

Draft submitted. may be sent to Public for acceptance.

K.P.
15-8-30.

15-8-30

1678

1678 Rev. 3368/B-18 (9-8-30

Public (Police) deptt

The draft order may be accepted in this deptt and the file returned to Law (Genl) deptt

Police 3121

Pub (Police) No 3121-1 22.8.30

Law L.G. 3504-B 22-8-0.

ARK 20/8/30

21/8/30

Law (General) Dept.

May issue

K.P. 26-8.30

25/8

Sectt. 11-5 (a)—50,606—5-11-29.

Law (General) DEPARTMENT.

	Date.	Initials.
When received for Fair-copying.		
When copied ..		
When examined ..		
When signed ..		
When despatched ..		

Legal Assistance

Fee to pleader - Criminal Prosecution of Sub-Insp of Police Head Constable 1/Conegal - Coimbatore Dt. - D ms recommends Govt to pay out of public funds not-withstanding the Rules already paid should be approved - Officers concerned from whom compensation awarded to the Officers

READ AGAIN G.O. No. ....., dated 19

..... 19

READ ALSO:

C. No. 33683 From the Dist. Coimbatore. Rep., No. 5566/30 D3 dated 7. 8. 30. 19 30.

" " " " " " " " " 19

" " " " " " " " " 19

ORDER.

MS

No. 3582, dated 26/8/ 19 30

The Govt are unable to accept the recommendation of the Dist. Coimbatore that the sum of (Rupees Fifteen only) Rs 15/- paid to the Public Prosecutor for opposing the Criminal Revision Petition before the Sessions Judge should be met entirely from public funds, when the Police Officers concerned have been awarded a compensation of Rs 25 each.

The Dist. is therefore requested to recover the sum

515 16

Rupees Fifteen (Fifteen only) from the two police officers concerned in equal share.

15.8.30.

15/8

1678

1678

To the Dir. Combatting.

To the Accountant (A&O)

To the Dublin (Police) Dept.